

COMMISSIONERS APPROVAL

CHILCOTT *K*

THOMPSON *at*

LYONS

PLETTENBERG (Clerk & Recorder)

Date.....February 1, 2007

Members Present.....Commissioner Greg Chilcott,
Commissioner Alan Thompson and Commissioner Howard Lyons

Minutes: Glenda Wiles

The Board held a public hearing to adopt a resolution to create the Board of Adjustment. Present at this meeting was Planning Director Karen Hughes. Commissioner Chilcott called the hearing to order with the Pledge of Allegiance and read the public notice. Karen presented a staff report citing on November 7, 2006, the voters of Ravalli County enacted an interim zoning regulations via an initiative. Part of the initiative requirements are that a Board of Adjustment be established for interms of zoning. The Montana Statutes call for a five-member board with two-year terms. This Board will make decisions on appeals for the zoning, decisions on variances from the zoning, and how to interpret the zoning criteria. She stated once the board members have been appointed, they will need to address the by-laws and procedures for this board. She noted it is important to move forward on the creation of this board as there are citizens who are asking for appeals and variances on their subdivisions.

Public comment was then called for. No members of the public spoke. Public comment period was closed. Board deliberation took place.

Commissioner Thompson asked what this Board's specific charge would be. Karen stated it would be issuing variances on the citizen initiative of the "1 house for 2 acres". They would look at any unique circumstances and review them under the interim zoning regulations. She noted when permanent zoning is in place, this board could be continued if the Commissioners wish to do so. Karen noted although the interim zoning is for a one year period, the Montana Statute calls for two-year terms. When the interim zoning 'goes away' and permanent zoning takes its' place, the Commissioners could disband the board or they could reappoint this board as a permanent Board of Adjustment. This board is a judicial body and they make decisions by granting variances etc. The statute allows specific criteria to be established for the allowance of variances. Commissioner Thompson asked if this Board of Adjustment was the final decision maker. Karen stated they are, but their decisions could be appealed through the courts by the applicant.

Commissioner Thompson asked who the legal counsel for this board would be. Karen said she believes it would be the County Attorney's Office.

Commissioner Lyons asked if this Board would be involved in any changes in zoning. Karen stated that is considered a legislative action and either a separate board or the Planning Board would become involved in actual zoning.

Commissioner Chilcott asked about the specific criteria for the Board of Adjustment findings. Karen stated the code requires a positive finding for each and every criteria (those being A through I within the resolution, which is within the initiative language). Commissioner Chilcott asked if the Commissioners have the authority to add language (that all findings are meant to be in the positive if a variance is granted). Karen stated that would be appropriate, as it makes the criteria/findings more stringent than state law.

Commissioner Chilcott asked about the two-year terms with staggered terms, particularly in light of the one-year period of the Interim Zoning. He stated he would like to see staggered terms on this board as is done by other boards. Commissioner Thompson asked if the staggered terms would be the anticipated roll-over of this Board. Commissioner Chilcott stated the staggering would be consistent with the other boards in the county. Karen stated she will check and see if that can be done within the by-laws.

Commissioner Lyons asked if criteria 'H' is needed. Karen stated these criteria are straight out of the Initiative, and there is no option.

Due to the late arrival of a number of people, public comment was again allowed. No one spoke. Public comment was then closed.

Commissioner Lyons made a motion to adopt Resolution No. 2032 with the addition of adding the word 'positive' under the sentence for findings of criteria.

Commissioner Thompson seconded the motion with discussion of adding the staggered terms. The Board then discussed the third 'whereas' addressing the staggered two year terms with 2 board members at 1-year and three board members at 2-years. Commissioner Thompson made a motion to change the 'third whereas' for the staggering of terms. Commissioner Lyons seconded the motion. Karen clarified the motion to make sure the Resolution keeps within the Montana Statute Language for staggered terms. The Commissioners agreed, and all voted "aye" on the amendment. In regard to the original motion, all voted "aye".

The public hearing was then closed.

In other business the Board reviewed the applicants for the Board of Adjustments as follows: Penny Howe of Stevensville, Shaen McElravy of Stevensville, Bob Frost of Hamilton, Will Zeiler of Florence, William Hester of Florence, Roger Linhart of Stevensville, Terry Nelson of Victor, Chris Linkenhoker of Hamilton, Alfred Simmons of Hamilton and Phil Connelly of Corvallis.

Commissioner Thompson stated he is not interested in interviewing all of the applicants, as one person has a law suit against the Commissioners; while others have written critical letters and belittled the Commissioners. He indicated there are seven or eight applicants he would like to interview; those being: Alfred Simmons, Penny Howe, Bob Frost, Will Zeiler, William Hester, Roger Linhart and Phil Connelly. He questioned if Phil Connelly would be able to serve both on the Planning Board and Board of Adjustments.

It was agreed to add Terry Nelson to the list. Glenda will set up the interviews.

In other business, the Board held a public hearing for a petition to abandon a section of Front Street (alleyway) in Corvallis by Petitioner Tim Smith. Present at this hearing was Road Supervisor David Ohnstad, Surveyor Steve Powell, Petitioner Tim Smith and Engineer Roger DeHaan and Chuck McRey of the Corvallis Sewer District. Commissioner Chilcott called the meeting to order by reading the legal notice.

Steve Powell read the Viewers' Report. He noted buildings crowd the west side of the alley and there are some uncertainties of the exact location of the alley. He stated it appears the power poles are within the platted alley on the east side. He stated it is not a good idea to abandon the full width, as the petitioner has requested, because of those encroachments.

Chuck stated if anything happens to their sewer infrastructure they may have to utilize large pieces of equipment for excavation and repair. He also noted emergency services such as the fire department might need the area for their response. Commissioner Chilcott asked if 35' would be sufficient for any services. Chuck stated 35 feet would be sufficient.

Steve drew the dimensions on the chalk board for discussion.

Roger DeHaan questioned the future use of that area. He stated it is currently sufficient for sewer needs, but what about the future. He also noted the sewer on the next street feeds Willow Creek. The question is: how many people are going to live in Corvallis in the next forty years? They need to look to the future and the need of space for utility lines which include sewer lines. More sewer and water will become a necessity, and adding a water line next to the sewer line will easily use the 35 feet. Roger felt if this abandonment is not a matter of life and death it shouldn't be done. There are too many needs for the public property; it is very valuable. You could charge the individual for this amount of property in case you need to buy it back in 20 years. Roger felt the property should be kept as public easement.

Tim stated they have historical uses for parking, etc. and the alley does not match the previous abandonment of 12' to the north end. He stated he finds it 'far fetched' that they would put in lines and do a 'dog leg' for that 12'; then the other 5'. He stated they wanted to extend the 12' portion, but since the telephone poles do not coincide with that 12', both he and Sandy (the other petitioner) agree that the 5' would allow them to set the

usage of fences and parking. He stated he would have no problem having the utility line drawn in if that was necessary.

Public comment was closed. Board deliberation began.

Commissioner Thompson stated the Viewers' report addresses what exists. The previous petition in 1990 abandoned 12' of the alley at the north end. No one drives this area because of the power poles, water well, and laundry mat. It would leave a 28' alleyway with 5' abandonment. The Viewers' report recognizes the present obstructions and the recommendation allowing 5' rather than 12' allows public access. He felt this was a compromise.

Commissioner Lyons stated they either need to allow this or move some buildings. He stated he has no problems allowing the 5' abandonment.

Commissioner Chilcott questioned the fact that this is ground deeded to the public. Steve stated it is platted land and if the public use is vacated the land would then be reverted to the owners. Steve stated this is land used by the public and the interpretation of Peter Dayton (Montana Roads Specialist) shows some difficult legal definitions of this platted land. If abandoned, the private owner obtains full deed of the property. Mr. Smith and Sandy would then own the land. It would be ill-advised for them to construct a building at that location if the utilities are needed within the five feet. The encroachments include a water well recently put in without permission.

Commissioner Lyons asked if the other side land owners can ask for 5', too. Steve stated the alley is wide enough to accommodate the well that was drilled, but the future use may question the location of the well.

Commissioner Chilcott stated if the County were to purchase an easement from a private party they are expected to write a check. But when the County gives the land by abandonment, no one wants to write the check. He stated 5' might not be a lot of land, but due to the utilities and potential future needs, the space becomes very important. He stated he is duty-bound to protect the public's financial interest.

Steve stated the County is the holder of the ground for public interest. And they have statutory authority to abandon the land if it serves no need. The statute addresses the fact that the land would revert to the adjoining land owners.

David stated there are many opinions on the easements and rights-of-way. In this case, the plat was created with an easement that could not be sold, while it could be utilized for a public purpose. He stated he does not think the Board has the authority to sell the land.

Tim stated he has lived in Corvallis and the laundry mat has been there for over 25 years. The encroachments occur over time by numerous residents.

Commissioner Chilcott asked Roger if sewer and water could be put in at 28' on the north end. Roger stated the water needs to be at least 10' from the sewer and it depends on the depth of the project. In this particular area, he does not foresee much usage. He stated this is a 'slippery slope' in regard to the value of the public access. He stated the Board should think in terms of the future. It is difficult to retrieve the land, once it's been given away.

David stated the abandonment proceedings he has been involved with did not involve future public use. Unless the power line ceases to exist, there might be more utility use in the alley.

Commissioner Chilcott stated the previous 1990 abandonment of 12' on the north end of the alleyway makes this unique.

Commissioner Thompson stated Corvallis is unique with the 80-100' wide roads and a person finds all kinds of encroachments. He felt 35' is wide enough.

Commissioner Thompson made a motion to abandon this section of the alleyway as recommended, due to the Viewers' report with existing encroachments. Commissioner Lyons seconded the motion and all voted "aye". See Resolution No. 2033.

In other business Commissioner Chilcott stated he was officially served the lawsuit by Ron Lords at 9:30 this morning. Commissioner Thompson stated it is frustrating to work through the problems that exist, yet be under certain restraints.

In other business the Board met to discuss the proposed closure of the local Farm Service Agency Office in Hamilton. Numerous ranchers and agriculture producers were present to express their dissatisfaction over this local office closure. Cliff Trexler stated there is no cost savings to close the Hamilton Office and move three employees to Missoula. He said this is not streamlining the issues and it does not benefit the agricultural producer. The producers were not asked for any input into the issue of office closure. The state employee said he did not ask, nor does he ask the local producers for any input, because 'he knows what is best and he already knows how they feel'.

Commissioner Thompson stated it does not make any sense for the Hamilton Office, which is the largest office, to close and move into the smaller office. Currently there are 251 producers utilizing the Farm Service Agency services in Ravalli County, while Mineral and Missoula County, combined, do not exceed 150 producers. Randy Maxwell stated Mineral and Missoula County only paid out one third of Ravalli County's amount, an 11-year average of over forty million dollars in products.

Larry said a resolution from Ravalli County would help stop this consolidation. He also noted the Ravalli County farmers and employees would be required to drive to Missoula, and they outnumber the other two counties.

RC&D Director Kit Sutherland said they also should address the Farm Service Agency's role in other Federal offices. Larry said it is best to keep these USDA's Offices together, as they augment one another. He said the state office does not stand up against the federal office.

Commissioner Chilcott, now being present, reviewed the statistics: the number of agricultural producers in Ravalli County, production etc., compared to Mineral and Missoula County, and noted Ravalli County has the most production and producers, due to our rural nature.

Larry stated the employees are there to provide the services to the producers. The Hamilton Office employs 3 full time and one part time employee. There is 1 employee in Missoula, which is based on the need and work load in two counties.

Randy stated he received a letter from U.S. Representative Denny Rehberg, U.S. Senator Max Baucus and U.S. Senator Jon Tester and they too share concern over the office closure.

It was noted the USDA will review this proposal, the U.S. Senate will be notified, and a 30-day comment period will begin. Public meetings will be held in affected counties, and then a final decision will be made at the Federal level.

Another concern is if the consolidation takes place, the state employees will not be able to represent the larger area, which now encompasses three counties. The issue of representation has not been addressed at the State level.

Commissioner Chilcott stated the only point that gives this office closure merit is that they have a central point, such as Missoula. The producers agree they seldom go to Missoula for any sales or service. Most large producers utilize local vendors.

Randy mentioned the Governor is not in favor of the local office closure and he is very committed to helping the local producers.

Commissioner Lyons made a motion to oppose the closure of the Hamilton Farm Service Office by having Glenda draft a Resolution. See Resolution No. 2034. Commissioner Thompson seconded the motion and all voted "aye".

In other business the Board held an interview with Craig Siphers for the Open Land Board.

The Board met to decide whether to submit a letter directing George Corn to file suit to determine the validity and constitutionality of the petition and proposed obscenity ordinance. Commissioner Thompson noted the will of the people was they did not want pornography, etc. in the valley, but it was ruled unconstitutional. Yet, for the most part people want the valley free from this type of thing. Commissioner Lyons questioned the need for another ordinance with so many laws on the books that are not being used fully.

Commissioner Thompson gave some background on the Harmful to Minors and Obscenity Ordinance. The Obscenity Ordinance did not meet constitutionality; thus a review by the court was necessary.

Commissioner Thompson made a motion to draft a letter to County Attorney George Corn asking him to file suit to determine the constitutionality of Mr. Erickson's proposed ordinance; the form of which was approved by the Clerk and Recorder on January 25, 2007. Commissioner Lyons seconded the motion and all voted "aye".